

Reference Number: 167-01-DD  
Title of Document: Appeal Procedure For Facilities Licensed or Certified by SCDDSN  
  
Date of Issue: May 29, 1987  
Effective Date: May 29, 1987  
Last Review Date: March 15, 2009 **Revised**  
Date of Last Revision: March 15, 2009  
  
Applicability: All Programs Licensed or Certified by SCDDSN

---

## PURPOSE

The purpose of this document is to establish procedures for the appeal of adverse decisions concerning the denial, suspension or revocation of a license by the South Carolina Department of Disabilities and Special Needs. Authority for this procedure for licensed facilities is set out in S.C. Code Ann. §44-20-710, et seq. (Supp.2008). It is the policy of the Department that each appellant be afforded a full and fair hearing within the Department in accordance with S.C. Code Ann. §1-23-310, et seq. (Supp.2008).

## APPEAL PROCEDURE

1. Where the Department has denied, revoked, or suspended a license or certificate to operate a facility or program in accordance with 26 S.C. Code Ann. Regs. 88-125 (Supp. 2008), the operator, owner, or governing body of the facility, if it desires to appeal the action, must give written notice of its intent to appeal within ten (10) calendar days from the date the notice of the adverse action was mailed. The facility's notice of appeal must be addressed to the Director of the Division of Quality Management. The notice of appeal should set out in clear and concise terms the basis for the appeal and the relief sought. Any statements, letters, or correspondence which supports the appeal should be attached. The notice should also state whether a hearing is requested.

2. The Division Director, upon receipt of the appeal, shall immediately cause to be assembled an appeal package consisting of all relevant correspondence, statements, documents, and the facility's appeal. The Division Director shall forward the appeal package to the Department's General Counsel.

### **PARTIES**

1. The Director for the Quality Management Division shall be considered the respondent during the appeal. However, the Division Director may appoint a representative or be represented by an attorney for the purpose of presenting the division's position. In order to present an orderly presentation of evidence, the respondent shall present its position first before the examiners.
2. The facility operator, owner, or the governing board of the facility shall be considered the appellant and may be represented by a representative or an attorney.
3. The Department, through the State Director, shall designate three impartial examiners who may or may not be employees of the Department, but, in the any event, they shall not be employed by the Department's Quality Management Division. One examiner shall be designated as the chairperson for the contested case. The examiners will hear the contested case and issue a recommendation to the State Director.

### **HEARING**

1. The Department's General Counsel will give written notice of the place, time and date, the nature of the hearing and the authority governing the matters in issue. The notice shall be given at least thirty (30) calendar days prior to the hearing. A copy of the appeal package will be made available to the appellant and the appeal examiners prior to the hearing. Generally, all hearings will be conducted in the Department's Central Office. Where a hearing is not requested, the General Counsel shall present the appeal and the Division Director's action to the State Director for a final decision. The appellant will be given the opportunity to offer any additional written argument to the State Director before final decision.
2. At the hearing, the appellant will be given the opportunity to present any witnesses, documents, or other matters bearing on the issue of the adverse action. The appellant may submit oral or written arguments in support of its position. The Division Director or his/her representative may likewise present additional evidence or arguments in the same manner as the appellant. The responsibility for the presentation of any documents or the attendance of any witness shall rest with the party presenting that evidence. The hearing and evidentiary matters will be governed by the provisions of S.C. Code Ann. §1-23-310.

3. The Department's General Counsel shall be responsible for scheduling the hearing, providing appropriate notice to all parties, and for other matters including establishing and maintaining the record in the case. The General Counsel shall be present at the hearing and shall rule on all legal matters, particularly those of a procedural or evidentiary nature. The General Counsel shall not, however, participate in the decision process with the examiners concerning the contested adverse action. The General Counsel shall not represent the Division before the hearing. The General Counsel shall advise the State Director as requested.

### **AGENCY DECISION**

1. Within five (5) business days after hearing the contested case, the examiners will issue a written recommendation reciting pertinent facts, applicable laws or regulations, and conclusions. The recommendation will be forwarded to the State Director. A copy of the recommendation will be sent to the appellant and respondent.
2. The appellant and respondent may, within the ten (10) calendar days of the mailing of the recommendation, forward a letter to the State Director citing any exceptions to the decision and/or presenting argument for their position. No new evidence will be received by the State Director after the hearing, unless it is clearly relevant to the issues involved, was not otherwise available for the hearing, and shown that its exclusion would be fundamentally unfair.
3. Unless emergency action has been taken by the Division Director to issue a summary suspension, all adverse actions shall become final after ten (10) calendar days from the mailing of the notice of adverse action, except in those cases where a timely appeal has been initiated by the facility operator. In those cases where a proper appeal has been initiated, a final decision for the Department shall be issued within 30 days by the State Director in writing at the conclusion of his consideration of the examiners' recommendations and further argument, if any.
4. Time limitations specified herein must be adhered to unless, for good cause shown, a waiver is granted by the State Director.
5. Any further appeal of the Department's final decision must be filed with in a court of competent jurisdiction within thirty (30) calendar days of the Department's final decision. Such appeals will be made from the record in accordance with S.C. Code Ann. §1-23-310 et seq. (Supp. 2007).

### **EMERGENCY ACTION**

If the Division Director finds that the public or individual health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in the order of suspension, revocation, or denial of a license, then summary suspension of a

license may be ordered pending proceedings for revocation or other adverse action. The proceedings shall be promptly instituted and determined. The time limits may be waived to expedite a prompt decision.

---

Kathi Lacy, Ph.D.  
Associate State Director, Policy  
(originator)

---

Robert W. Barfield  
Acting State Director  
(approved)